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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

EDWARD A. MACHADO, as Trustee, etc.,  
et al.,

Plaintiffs and Respondents,

v.

BRYAN P. MYERS et al.,

Defendants and Appellants.

D074282

(Super. Ct. No. 37-2014-00027033-  
CU-OR-NC)

APPEAL from an order and amended judgment of the Superior Court of San Diego County, Timothy M. Casserly, Judge. Reversed.

Seltzer Caplan McMahon Vitek, Arezoo Jamshidi, and Jessica S. Doidge for Defendants and Appellants.

Galuppo & Blake and Daniel T. Watts for Plaintiffs and Respondents.

Bryan and Jackie Myers (Appellants) appeal from a cost award and amended judgment issued after the trial court entered judgment pursuant to Code of Civil Procedure section 664.6, which allows for entry of judgment pursuant to the terms of the

parties' oral stipulation of settlement entered before the court.<sup>1</sup> Appellants separately appealed the underlying judgment. (*Machado, et al., v. Myers, et al.*, (Aug. 16, 2019, D073824) [nonpub. opn.].) In that appeal, we conclude reversal of the judgment is warranted. (*Ibid.*) In this appeal, we conclude the cost award and amended judgment must also be reversed.

## FACTS

In February 2016, the parties entered into an oral settlement agreement on the record before the court. The settlement was intended to resolve a dispute between neighbors. One of the provisions of the stipulated settlement was that the parties would each bear their own attorney fees and costs. Edward and Zlaine Machado, as trustees of the Edward and Zlaine Machado Family Trust dated June 30, 2003, plaintiffs below, subsequently moved to enforce the settlement under section 664.6, which entitles a party to entry of judgment "pursuant to the terms of the settlement." (§ 664.6.) In August 2016, the court entered an order granting the Machados' motion and finding the parties had entered into an enforceable settlement agreement on the record, Appellants did not abide by the terms of the settlement, and the Machados were entitled to entry of judgment. The trial court did not enter judgment at that time.

In 2017, the Machados filed an application for entry of judgment, arguing that, due to Appellants' purported breach of the settlement agreement, the Machados should be relieved from certain obligations under that agreement, including their obligation to enter

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<sup>1</sup> All statutory references are to the Code of Civil Procedure.

into a license agreement permitting Appellants to use a portion of their real property. The court entered judgment, awarding the Machados \$7,500 as well as injunctive relief. The judgment entered did not include all of the material terms of the parties' settlement agreement. One of the omitted terms was the parties' agreement to bear their own costs.<sup>2</sup>

In January 2018, the Machados submitted a memorandum of costs to the trial court, seeking reimbursement for nearly \$30,000 in litigation costs. Appellants moved to strike the costs bill or alternatively to tax costs, arguing that, as a term of the parties' settlement agreement, the parties had agreed to bear their own costs, and the judgment was void for failing to include that term (and others).<sup>3</sup> The trial court denied Appellants' motion to strike and awarded costs to the Machados as the prevailing party under section 1032.<sup>4</sup> In April 2018, the court entered an amended judgment which included an additional award of nearly \$23,000 in costs.

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<sup>2</sup> We address Appellants' appeal of that judgment and a subsequent order denying their motion to set aside or vacate that judgment in a separate opinion (*Machado, et al., v. Myers, et al.*, (Aug. 16, 2019, D073824)) where we conclude the judgment did not comport with section 664.6 because it was not consistent with the terms of the parties' settlement agreement.

<sup>3</sup> Appellants alternatively argued that certain requested costs should be taxed because they were improper or unreasonable. The trial court granted in part Appellants' motion to tax costs. Appellants renew on appeal certain arguments related to their motion to tax costs. Because we determine the costs award, as a whole, is subject to reversal, we do not reach the merits of the issues related to Appellants' alternative motion to tax costs.

<sup>4</sup> Even though the trial court had entered judgment pursuant to section 664.6 on the parties' stipulated settlement, in the order denying Appellants' motion to strike, the trial court indicated it believed the settlement agreement had "failed" and was "moot."

Appellants now challenge the cost award, contending the parties' settlement agreement—not the judgment—should govern the allocation of costs. They contend the judgment is "void" and violates section 664.6 because it is not consistent with the terms of the parties' settlement agreement. In response, the Machados argue that challenges to the underlying judgment are not at issue in this appeal.<sup>5</sup> They further argue they never agreed to an unconditional waiver of costs and any obligation to comply with the previous agreement to waive costs was relieved by Appellants' material breach of various terms of the parties' settlement agreement.

## DISCUSSION

In D073824, we reverse the judgment entered pursuant to section 664.6 because it did not include all material terms of the parties' settlement agreement and modified others, and thus failed to comport with section 664.6, which allows for entry of judgment "pursuant to the terms of the settlement agreement." The costs award here was premised on that judgment and the trial court's determination the Machados were the prevailing

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<sup>5</sup> Although they do not make a formal motion in this appeal, the Machados urge us to strike portions of Appellants' opening brief on appeal and to consider issuing sanctions, contending it is improper for Appellants to challenge the judgment in this appeal and to "use the supposed invalidity of the judgment to attack the cost award." The initial judgment and the subsequent costs award were each independently appealable. (§ 904.1, subd. (a)(1), (a)(2).) Notwithstanding the fact that we declined to consolidate the two appeals and allowed them to proceed independently, Appellants are not precluded from challenging the costs award on the basis that its entry is premised on an erroneous judgment. (See *Ducoin Management, Inc. v. Superior Court* (2015) 234 Cal.App.4th 306, 314 ["A disposition that reverses a judgment automatically vacates the costs award in the underlying judgment even without an express statement to this effect"].) Indeed, as we conclude *post*, this is the dispositive issue in this appeal.

party.<sup>6</sup> A "judgment for trial costs . . . falls with a reversal of the judgment." (*Purdy v. Johnson* (1929) 100 Cal.App. 416, 421.) In light of our conclusion that the underlying judgment requires reversal, it can no longer be said that the Machados are the prevailing party. (See *Gilman v. Dalby* (2009) 176 Cal.App.4th 606, 620 [reversing award of fees and costs under Civil Code § 1717 because, "[i]n light of our conclusion that the judgment must be reversed . . . , it no longer can be said that [respondents] are the prevailing parties"].) We therefore reverse the costs award and amended judgment, and we need not address the parties' additional arguments.

#### DISPOSITION

The costs award and the amended judgment are reversed. Appellants are entitled to costs on appeal.

GUERRERO, J.

WE CONCUR:

O'ROURKE, Acting P. J.

IRION, J.

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<sup>6</sup> Generally, "a prevailing party is entitled as a matter of right to recover costs in any action or proceeding," but the parties may stipulate to alternative procedures for awarding costs. (§ 1032, subds. (b), (c).)